IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1356 OF 2005
IN
APPEAL FROM ORDER NO.95 OF 2004

Mr.Mathew John Gudinho. ..Applicant.

V/s.

BMC & Ors. ..Respondents.

Mr.P.J.Thorat for applicant.

Mrs. Joglekar for BMC.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 31, 2006.

P.C. :

1. Heard.

2. The cause mentioned in the application, in my opinion, is not sufficient to excuse the consistent default committed by the advocate on record for the appellant in not appearing in the court when the appeal was called out for admission. The record indicates that the matter was called out on 4/10/2005 but court showed indulgence as none appeared on that date by adjourning the matter. Even on 5th October, 2005 when the matter was called out as adjourned matter, none appeared for the appellant.

3. The explanation offered, as mentioned earlier, is not acceptable. However, as the litigant should not suffer for the mistake of the advocate on record for applicant, application is allowed in terms of prayer clause (a) on condition that the advocate on record for the appellant shall pay costs to the High Court legal Services Committee quantified at Rs.1,000/- within one week from today and produce receipt thereof before the registry within that time, failing which the registry to proceed on the assumption that this application has been dismissed for non-prosecution.

4. If the above condition is complied in time, the appeal be listed for admission as per its turn.